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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

BNSF RAILWAY COMPANY,	)	1: 08-CV-1086 AWI SMS
)	
Plaintiff,	)	ORDER DIRECTING THE CLERK
	)	OF COURT TO REIMBURSE
v.	)	FILINGS FEES TO DEFENDANTS
	)	THAT WERE ERRONEOUSLY
SAN JOAQUIN VALLEY RAILROAD	)	INCURRED
COMPANY, et al.,)	
	)	ORDER DIRECTING THE CLERK
Defendants.	)	OF COURT TO TERM THE
	)	PENDING APPEAL
<hr style="width: 40%; margin-left: 0;"/>	)	(Documents #198 & 199)

On December 30, 2010, Defendant and Counterclaimant San Joaquin Valley Railroad Company and Defendant Tulare Valley Railroad Company (“Defendants”) filed a request for reimbursement to Defendants of filing fees. Defendants’ request is based on a December 28, 2010 notice of appeal erroneously filed by Defendants. Defendants have provided evidence that they intended the December 28, 2010 documents to be a motion for reconsideration of the Magistrate Judge’s December 14, 2010 order and not an appeal to the Ninth Circuit Court of Appeals. See Documents #198 & 199. As such, Defendants should not have paid the \$455.00 required for an appeal to the Ninth Circuit Court of Appeals.

In the interests of justice, the court ORDERS that:

1. Defendants request for the reimbursement of \$455.00 to Defendants (Document #198) is GRANTED;

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- 2. The Clerk of the Court is DIRECTED to reimburse Defendants in the amount of \$455.00;
- 3. As the pending appeal was filed in error, the Clerk of the Court is DIRECTED to term the pending appeal (Document # 194).

IT IS SO ORDERED.

Dated: January 4, 2011



CHIEF UNITED STATES DISTRICT JUDGE